

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint No. :** 5091 of 2021  
**Ordre reserved on:** 02.11.2022  
**Order pronounced on:** 22.03.2023

1. Mr. Sridhar Krishnamoorthy Iyer  
2. Mrs. Shobha Sridhar  
Both RR/o: - D-48, Ground Floor, GK Enclave- II, Opposite  
Savitri Cinema, New Delhi- 110048

**Complainants**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at:** W4D- 204/5, Keshav Kunj, Cariappa  
Marg, Western Avenue, Sanik Farms, New Delhi- 110062

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Sh. Nilotpal Shyam (Advocate)  
Sh. Garvit Gupta (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint dated 10.01.2022 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules



and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.08.2022
8.	Unit no.	Plot No. G-15 (Page no. 28 of the complaint)
9.	Unit area admeasuring	155.32 sq. yds. (Page no. 28 of the complaint)
10.	Allotment letter	05.06.2014 (Page no. 23 of the complaint)
11.	Date of execution of agreement to sell	05.06.2014 (Page no. 25 of the complaint)



12.	Possession clause	<p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser <b>within</b> thirty-six (36) months <b>from the date of the execution of the Agreement to sell</b> and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <b>However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above.</b> In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month</i></p>
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		<p><i>as holding charges for the entire period of such delay.....”</i></p> <p>(Page no. 27 of the complaint).</p>
13.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by June 2017. As per agreement to sell, the construction and development work of the project is to be completed by June 2017 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
14.	Due date of possession	<p><b>05.12.2017</b></p> <p><b>[Note: 36 months from the date of agreement to sell i.e., 05.06.2014 + six months grace period]</b></p>
15.	Basic sale consideration as per BBA at page no. 38 of complaint	<p>Rs.26,29,515/-</p>
16.	Total sale consideration as per customer ledger	<p>Rs.28,07,748/-</p>



	dated 15.12.2021 at page no. 39 of complaint	
17.	Amount paid by the complainant as per customer ledger dated 15.12.2021 page no. 39 of complaint	Rs.31,90,559/-
18.	Payment plan	Installment payment plan (Page no. 39 of the complaint).
19.	Part completion certificate	Not annexed
20.	Offer of possession without obtaining part CC	17.11.2016 [Page no. 46 of the complaint]
21.	Possession letter	22.01.2021 [Page no. 53 of the complaint]
22.	Delay in handing over the possession till date of possession letter i.e., 22.01.2021	3 years 1 month and 17 days

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

- I. That the respondent company through its representative had approached the complainants and represented its plotted colony namely "Raheja Arayna City" located at Sector-11 & 14, Sohna, Gurugram, Haryana would effectively serve their purpose.
- II. That the respondent company claimed that it has obtained a license from the Director General, Town & Country Planning, Haryana



(DTCP), Chandigarh for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law bearing license no. 25 of 2012 dated 29.03.2012.

- III. That based on the aforementioned representation and enquiries made, they have applied for allotment of plot vide a duly filed application form and started making payment from 15.05.2014.
- IV. That pursuant to the filing of application form, the respondent company allotted plot no. G-15, G Block, in "Raheja Aranya City" situated at Sector-11 & 14, Sohna, Gurugram, Haryana having carpet area of approximately 155.32 sq. yard to the complainants vide allotment letter dated 05.06.2014. On the same date both the parties entered into agreement i.e., agreement to sell dated 05.06.2014, for the sale of the impugned plot. All the clauses of said agreement to sell were not in accordance with the mandate as prescribed under model agreement of the rules made there under the Act, 2016. The said articles of agreement to sell to the extent of in congruency with the Act of 2016 read with relevant rules and regulations shall not be binding on the complainants. They crave the leave of this authority to point out such clauses of agreement to sell at the time of oral arguments.
- V. That as per agreement to sell, the respondent agreed to sell/convey/transfer the said plot for a total consideration of Rs.15142 per sq.



yard being basic sale price Rs. 23,51,855/- in accordance with annexure- A of the agreement to sell.

- VI. That as per article 4.2 of the agreement to sell, the possession date for the impugned plot was agreed to be 36 (Thirty-Six) months from the date of execution of agreement to sell i.e., 05.06.2014.
- VII. That the agreement to sell further stipulated under article 4.2 that the respondent company, if failed to deliver the possession of the impugned unit within the stipulated time frame, shall pay compensation@ Rs. 50/- per sq. yard of the plot area per month for the entire period of delay. The said clause is not only ex facie one-sided and arbitrary and hence not binding on the complainants, but the said clause is also in violation of express provisions of the Act, 2016 which has retroactive effect in view of law laid down by Hon'ble Supreme Court.
- VIII. That the complainants pursuant to the agreement for sale made the entire payment to the respondent. The said amount was paid towards the impugned plot in accordance with the demand raised by it.
- IX. That the complainants made all payment towards the sale consideration of the impugned plot in the impugned project including costs towards other facilities wherein all the payments were made in accordance with the demand made by it. Despite the said payments, the respondent failed to deliver the possession in agreed timeframe (i.e., 05.06.2017) for reasons best known and the respondent /promoter never bothered to intimate reasons and reasoning for the



delay to the complainants. Therefore, the respondent has breached the sanctity of the buyer's agreement.

- X. That the respondent/promoter issued an offer of possession with regard to impugned plot vide letter dated 17.11.2016 to the complainants. Later, the respondent/promoter invited the complainants to take the physical possession of the unit vide possession letter dated 22.01.2021. The said offer of possession letters dated 17.11.2016 and 22.01.2021 are illegal and non est in law since no part completion certificate\completion certificate\occupancy certificate with regard to the impugned plot has been granted to the respondent company by the competent authority till date. Hence the said letters of possession are not valid in the eyes of law and no valid possession has been received till date.
- XI. That the respondent has failed to complete the registration by way of conveyance deed of the said plot. Further even after repeated correspondences, the respondent never bothered makes any positive response towards registration of the plot.
- XII. That the complainants were never given any delayed possession charges with respect to the said plot.
- XIII. That there is almost 3.5 years of unexplained delay in handing over the possession by the respondent company to the complainants. Therefore, they have genuine grievance which require the intervention of this authority in order to do justice with them.





XIV. That the complainants have paid the demands raised within the stipulated time without any default in accordance with agreement to sell and thus are entitled to the interest at prescribed rate for the unreasonable delays in delivering the possession by it. Henceforth, the respondent company is liable to pay interest for delayed period of handing over the possession in accordance with section 18 of the Act of 2016.

XV. That it is a fit case wherein authority should order respondent company to pay interest prescribed rate for delayed period of handing over the possession till the actual date of handing over the possession in view the mandatory obligation as provided under section 18 of the Act, 2016 as well as on account of the acrimony of respondent company wherein it obliterated the trust reposed on it by complainant(s) by handing over their hard earned money always on time and in accordance with the agreement to sell. The respondent company did not perform the required reciprocity which goes to very root of any bilateral agreement.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).

- i. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the promised date of offer to possession to actual date of offer of possession on the amount paid by the complainants towards the impugned plot.
- ii. Direct the respondent company to execute the conveyance deed in favor of the complainants with respect to the said plot.



5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 08.02.2022, 21.04.2022, and 02.11.2022. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent intentionally delayed the procedure of the authority by avoiding to file written reply. Therefore, in view of order dated 02.11.2022, the defence of the respondent was struck off.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**D. II Subject-matter jurisdiction**



9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**E. Findings on the relief sought by the complainant.**

- E. I. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the promised date of offer to possession to actual date of offer of possession on the amount paid by the complainants towards the impugned plot.**
10. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....



*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

11. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

#### **4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the plot to the purchaser **within** thirty-six (36) months **from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above.** In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay....."*

12. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its

meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

13. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2017. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

14. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

*prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. Taking the case from another angle, the complainant/allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved persons, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping

powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding

17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent

/promoter which is the same as is being granted her in case of delayed possession charges.

20. **Validity of offer of possession:** At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining completion certificate-** The subject unit after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads, and street lighting.
- ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water, and sewer connections etc from the relevant authorities. In a habitable unit all



the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the subject unit with such minor defects under protest. This authority will award suitable relief for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit would not be considered a legally valid offer of possession.

- iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature, or they could be significant and unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of

provisions of agreement should be termed as invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest or decline to take possession raising objection against unjustified demands.

21. Though in the light of the above-mentioned facts the offer of possession made on 17.11.2016 by the promoter to the allottee is not valid, the same being made without obtaining part completion certificate but they have already taken possession on the basis of letter of possession on 22.01.2021 and is continuing as such and enjoying the property. They are certainly entitled to delay possession charges but only from the due date 05.12.2017 upto 21.01.2021 (possession letter), the date on which possession of the allotted unit was taken on the basis of the offer of possession 17.11.2016.
22. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.2 of the agreement executed between the parties on 05.06.2014, the possession of the subject apartment was to be delivered within 36 months from the date of agreement to sell which comes out to be 05.06.2017. As far as grace period is concerned, the same is allowed for

the reasons quoted above. Therefore, the due date of handing over possession was 05.12.2017.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 05.12.2017 till possession letter i.e., 22.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**E. II Direct the respondent company to execute the conveyance deed in favor of the complainants with respect to the said plot.**

24. The complainants are seeking relief of execution of conveyance deed. Article 10 of agreement to sell provides for 'conveyance deed' and is reproduced below:

**Article 10. CONVEYANCE DEED:**

**10.1 Stamp Duty and Registration Charges**

*The stamp duty, registration fee/charges and other expenses to be incurred at the time of execution of the Conveyance Deed in pursuance to this Agreement to Sell shall be borne by the Purchaser. The Purchaser shall be fully responsible for paying any deficient stamp duty and other charges to the government authorities. The Purchaser also undertakes to pay without demur any increase in stamp duty/registration charges as may be effected by the Govt. authorities even if such an increase takes place after the Purchaser has paid to the Seller all the dues/charges/fees etc. under this Agreement. Similarly, if there is any decrease in the stamp duty/registration charges the same shall be paid back by the Seller to the Purchaser.*

**10.2 Transfer Intimation and Clearance**

*The Purchaser can sell, assign, transfer, lease or part with possession of the said Plot but with prior intimation to the Seller. In such an event, except in sale, it shall be the responsibility of the Purchaser to continue to pay the charges including maintenance etc. pertaining to the Plot payable under this Agreement to the Seller. It is further agreed by the Purchaser that he shall make sure that in the event the*

*Plot is transferred/sold or the Purchaser gives temporary possession to any third party, such person shall from time to time, sign all applications, papers and documents and do all the acts, deeds, which the Seller deems necessary for safeguarding the Plot.*

**10.3 Execution of Conveyance Deed**

*That the parties shall undertake to execute the Conveyance Deed within sixty (60) days from the date of Seller calling upon the Purchaser to do so, subject to the payment by the Purchaser of the Sale consideration and all other dues in terms of the payment plan. In case of the Purchaser who has opted for long term payment plan arrangement with any Financial Institutions/Banks, the conveyance of the said Plot in favour of the Purchaser shall be executed only upon the Seller receiving No Objection Certificate from such Financial Institutions / Banks and the Deed of Conveyance will be deposited with the financial institutions as per the terms and conditions as agreed between the parties."*

25. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

**"Section 17: - Transfer of title**

*17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

26. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. On successful procurement of it, offer a valid make of possession to the complainant and execute the conveyance deed within 3 months from the date of obtaining the completion certificate.

**F. Directions of the authority**

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.70% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 05.12.2017 till possession letter i.e., 22.01.2021. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act;

- iv. The respondent shall execute the conveyance deed within 30 days of this order upon payment of requisite stamp duty as per the norms of the state government.
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.
28. Complaint stands disposed of.
29. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Ashok Sangwan)**

Member

Dated: 22.03.2023

**HARERA**  
**GURUGRAM**